

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO.319 OF 2005

Prakash P. Kulkarni  
V/s

...Petitioner

Nimba Bhikaji Ahire  
and 3 Ors.

...Respondents.

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Mr. N.B. Shah for the Petitioner.

Mr. A.S. Shitole, APP for the State.

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CORAM: V.M. KANADE, J.

DATE : 1st March, 2005

P.C.

1. Heard the learned Counsel for the petitioner and  
the learned APP for the State.

2. Petitioner is challenging the order of issuance of  
process by the Metropolitan Magistrate on the ground  
that no case is made out against the petitioner in the  
complaint. He submits that the bare perusal of the  
averments made in the complaint would disclose that no  
averments are made against the present petitioner and,  
therefore, the order of process should be recalled.

3. The complaint is filed under section 417, 420,  
421, 465 read with section 34 of the Indian Penal Code  
and hence it is a warrant triable case. Applicant has  
a remedy of making the application before the  
Magistrate for discharge under section 245 of the Code  
of Criminal Procedure at the appropriate stage.

4. The learned Counsel for the petitioner seeks permission to withdraw the present application with liberty to file an application for discharge under section 245. Permission granted. Application is allowed to be withdrawn and disposed of as such.

5. However, it is made clear that if an application for discharge is filed by the petitioner at the appropriate stage, the Trial Court shall hear and decide the same as expeditiously as possible and, in any case, within a period of three months.

5. All concerned to act on the copy of this order duly authenticated by the Registry.

V.M. KANADE, J.